

parties as could have been made if no appeal had been taken in the case; provided, the court shall be satisfied by the certificate of the clerk of the court of appeals, or other proper evidence, that the said appeal or writ of error has been dismissed.

1904. art. 5, sec. 25. 1888. art. 5, sec. 23. 1860, art. 5, sec. 19. 1806. ch. 90, sec. 5.

25. Where writs of error *coram vobis* are pending in the court of appeals, and it shall appear to the court necessary to try any matter of fact put in issue by the pleadings in the case, the court may direct a transcript of the record to the court where the defendant named in the original action may reside, or to such other court as the parties in the said cause may agree upon; and the court to which such transcript shall be transmitted, shall proceed in such action, and to a trial of the facts put in issue.

Appeals from Courts of Equity.

Ibid. sec. 26. 1888, art. 5, sec. 24. 1860, art. 5, sec. 20. 1729, ch. 3, sec. 3. 1785, ch. 72, sec. 27. 1814. ch. 94. sec. 5. 1818, ch. 193. sec. 1. 1819, ch. 144. sec. 4. 1826, ch. 200, sec. 14. 1830. ch. 185, sec. 1. 1864, ch. 156.

26. An appeal shall be allowed from any final decree, or order in the nature of a final decree, passed by a court of equity by any one or more of the persons parties to the suit, with or without the assent or joinder of plaintiffs or co-defendants in such appeal; provided that if the court of appeals shall affirm the decree of the court below, they shall not award costs of the appeal against any one except the appellant.

Matters in the discretion of the lower court.

Although no appeal lies from an order determining a matter within the discretion of the court, yet the question of whether a matter is within the discretion of the court and whether that discretion was so exercised as not to impair established rights, are open to review on appeal. *Emory v. Faith*, 113 Md. 256; *Gottschalk v. Mercantile Trust Co.*, 102 Md. 522.

No appeal from an order allowing an amendment of the pleadings. *State v. Brown*, 64 Md. 208.

The appointment of a trustee is a matter within the discretion of the lower court and the fact that the court gives an erroneous reason for its action, does not sustain an appeal. *Howard v. Waters*, 19 Md. 529.

From an order allowing the re-examination of a witness, no appeal lies. *Swartz v. Chickering*, 58 Md. 297.

No appeal from the action of the court on a petition for rehearing. *Zimmer v. Miller*, 64 Md. 296; *Jacobs v. Belmear*, 41 Md. 487.

No appeal from the action of the court in granting or refusing leave to file a bill of review. *Pfeltz v. Pfeltz*, 1 Md. Ch. 458.

No appeal from the action of the court on an application to file a supplementary answer. *Frisby v. Parkhurst*, 29 Md. 69; *Thomas v. Daub*, 1 Md. 324.

No appeal from the action of the court on an application to appoint an early day for the hearing of a motion to dissolve an injunction. *Owens v. Worthington*, 10 G. & J. 283.

No appeal from the award of costs. *Clagett v. Salmon*, 5 G. & J. 350.

See notes to sec. 2.

Interlocutory orders.

No appeal from an order sustaining a demurrer to a plea. *Danels v. Taggart*, 1 G. & J. 311.

No appeal from a mere practical order of court preparatory to final hearing. *Thomson v. McKim*, 6 H. & J. 302; *Wheeler v. Stone*, 4 Gill, 39.